III. ARRAIGNMENT AND PREPARATION FOR TRIAL

Criminal L.R. 12.1 Pretrial Conferences

(a) In any case that is unusually complex, by reason of the number of parties, the novelty of legal or factual issues presented, the volume of discovery materials, or other factor peculiar to that case, the government must notify the Clerk of Court when the indictment or information is filed that the case is appropriate for a pretrial scheduling conference pursuant to Fed.R.Crim.P. 12(c) and 17.1. If the government has not suggested a pretrial scheduling conference, the defendant or defense counsel may do so at the initial appearance or arraignment. Any time between the arraignment and the date set by pretrial scheduling order for filing pretrial motions must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(8)(B)(ii), upon a specific finding and order by the judicial officer under § 3161(h)(8)(A).

(b) A pretrial scheduling conference pursuant to Criminal L.R. 12.1(a) and Fed.R.Crim.P.12(c) and 17.1 may be set by the judicial officer conducting the arraignment, by the judicial officer assigned to pretrial proceedings, or by the judicial officer assigned to preside over the trial of the case. At a pretrial scheduling conference, the Court may set deadlines for filing pretrial motions, briefing, discovery and disclosure by all parties, hearings, trial, or any other dates that will further the ends of justice.

(c) In cases for which there will be no pretrial scheduling conference under Criminal L.R. 12.1(a), (b) and Fed.R.Crim.P. 12(c), upon oral motion by the defense at the arraignment the government must make available to the defendant, or to defense counsel, all information known to the government or in the government's possession falling within Criminal L.R. 16(b) if the government is following the open file policy, or if the government is not following the open file policy, all information within the scope of Fed.R.Crim.P. 12(d)(1) or 16(a) (other than material falling within Fed.R.Crim.P. 16(a)(1)(E)) within 5 days after the defendant's arraignment and plea on an indictment, other than for good cause shown. The government bears the burden of showing good cause for any failure of timely disclosure under this rule, and also has a continuing duty to disclose discoverable materials as they become available. If the defense moves for disclosure by the government under this rule, the defense is bound to the provisions of Fed.R.Crim.P. 16(b).

Criminal L.R. 12.2 Motions

(a) Unless otherwise provided by pretrial scheduling order in a specific case, all motions raising any issue described in Fed.R.Crim.P. 12(b) must be filed within 20 days after arraignment on an indictment. Unless otherwise provided by pretrial scheduling order in a specific case, the opponent must have 10 days to file a memorandum or other materials in response to any such motion. The movant then must have 5 days to file any reply.

(b) Any time between arraignment and the deadline set for filing pretrial motions must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(1). All time

consumed under Criminal L.R. 12.2(a) or pursuant to pretrial scheduling order from the filing of pretrial motions, through responses, replies, any hearing, and the timely disposition of the motion, must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(1)(F).

(c) If any motion seeks an evidentiary hearing, Criminal L.R. 12.3 applies and the defense is not required to file a supporting memorandum of law with the motion. If the movant does not seek an evidentiary hearing, then any supporting memorandum of law that the movant wishes to file must be filed at the same time as the motion.

Criminal L.R. 12.3 Evidentiary Hearing

If a motion seeks an evidentiary hearing, the movant must provide in the motion a short, plain statement of the principal legal issue or issues at stake and specific grounds for relief in the motion and, after a conference with the non-moving party, provide a description of the material disputed facts that movant claims require an evidentiary hearing. The movant also must provide an estimate of the in-court time necessary for the hearing. The non-moving party may file a response opposing an evidentiary hearing within 3 days after filing of a movant's motion seeking an evidentiary hearing. The non-moving party's response must include a short, plain statement of why that party believes that an evidentiary hearing is unnecessary.

Criminal L.R. 16.1 Open File Policy

(a) At arraignment, the government must state on the record to the presiding judicial officer whether it is following the open file policy as defined in Criminal L.R. 16.1(b). If the government states that it is following the open file policy and the defendant accepts such discovery materials, then the defendant's discovery obligations under Fed.R.Crim.P. 16(b) arise without further government motion or request and both parties shall be treated for all purposes in the trial court and on appeal as if each had filed timely written motions requesting all materials required to be produced under Fed.R.Crim.P. 16(a)(1)(A), (B), (C), (D), (E) and 16 (b)(1)(A), (B), and (C), and invoking Fed.R.Crim.P. 16(c). If the government is following the open file policy, the government need not respond to and the Court must not hear any motion for discovery under Fed.R.Crim.P. 16(a) or 16(b) unless the moving party provides in the motion a written statement affirming (i) that a conference with opposing counsel was conducted in person or by telephone, (ii) the date of such conference, (iii) the names of the government counsel and defense counsel or defendant between whom such conference was held, (iv) that agreement could not be reached concerning the discovery or disclosure that is the subject of the motion, and (v) the nature of the dispute.

(b) As defined by the United States Attorney's Office, "open file policy" means disclosure without defense motion of all information and materials listed in Fed.R.Crim.P. 16(a)(1)(A), (B), and (D); upon defense request, material listed in Fed.R.Crim.P. 16(a)(1)(C); material disclosable under 18 U.S.C. § 3500 other than grand jury transcripts; reports of interviews with witnesses the government intends to call in its case-in-chief relating to the subject matter of the testimony of the witness; relevant substantive investigative reports; and all

exculpatory material. The government must retain the authority to redact from open file material anything (i) that is not exculpatory and (ii) that the government reasonably believes is not relevant to the prosecution, or would jeopardize the safety of a person other than the defendant, or would jeopardize an ongoing criminal investigation. The defendant retains the right to challenge such redactions by motion to the Court.

(c) Unless these items contain exculpatory material, "open file materials" do not ordinarily include material under Fed.R.Crim.P. 16(a)(1)(E), government attorney work product and opinions, materials subject to a claim of privilege, material identifying confidential informants, any Special Agent's Report (SAR) or similar investigative summary, reports of interviews with witnesses who will not be called in the government"s case-in-chief, rebuttal evidence, documents and tangible objects which will not be introduced in the government's case-in-chief, rough notes used to construct formal written reports, and transcripts of the grand jury testimony of witnesses who will be called in the government's case-in-chief.

(d) Unless otherwise ordered by the Court, when the government is following the open file policy under Criminal L.R. 16.1(a), materials described in Fed.R.Crim.P. 16(a)(1)(E) must be disclosed to the defendant not later than 15 days before commencement of the trial, unless the government shows good cause for later disclosure. Grand jury transcripts of any and all witnesses the government intends to call at trial will be made available to the defendant no later than one business day before commencement of the trial. The defendant must disclose materials described in Fed.R.Crim.P. 16(b)(1)(C) as soon as reasonably practicable after the government's disclosure under Fed.R.Crim.P. 16(a)(1)(E), and in any event not later than two business days before a defense expert witness testifies at trial, unless the defendant shows good cause for later disclosure.

(e) In a case in which the government is following the open file policy, the defense must disclose materials described in Fed.R.Crim.P. 16(b)(1)(A) and (B) as soon as reasonably practicable, and in any event not later than 15 days before commencement of the trial, unless the defense shows good cause for later disclosure.

(f) If the government elects not to follow the open file policy described in Criminal L.R. 16.1(b), discovery must proceed pursuant to Fed.R.Crim.P. 16 and Criminal L.R. 12.1(c).